

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I.(a) PLAINTIFF

Great-West Life & Annuity Insurance Company

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Arapahoe, CO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Thomas H. Lawrence
LAWRENCE & RUSSELL
5050 Poplar Ave., Suite 1617
Memphis, TN 38157
901-844-4430

FEB 1 2002

ATTORNEYS (IF KNOWN)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN) 02 CV 0334-D

Hardin Ramey
Blakeley & Ramey
12225 Greenville Avenue, Ste. 880
Dallas, Texas 75243

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

1 U.S. Government Plaintiff
 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

	PTF	DEF	(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

29 U.S.C. § 1132(a)(3). Plaintiff seeks equitable relief and to enforce the terms of an ERISA-covered employee welfare benefit plan.

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug Malpractice <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Emp. Ret. Inc. Security Act	LABOR SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWV (405(g)) <input type="checkbox"/> 864 SSI Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS --- Third Party 26 USC 7609	FEDERAL TAX SUITS <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

(PLACE AN "X" IN ONE BOX ONLY)

Transferred from
 4 Reinstated or Reopened
 5 another district (specify)

Appeal to District

Judge from
 6 Multidistrict Litigation
 7 Magistrate Judgment**VI. ORIGIN** 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: YES

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION

 UNDER F.R.C.P. 23**VIII. RELATED CASE(S) (See instructions):**

IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE 2/12/02

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

✓
ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CLERK, U.S. DISTRICT COURT

By _____ Deputy _____

FEB 19 2002

GREAT-WEST LIFE & ANNUITY
INSURANCE COMPANY,

Plaintiff,

v.

DONALD MILLER, HARDIN RAMEY,
and BLAKELEY & RAMEY,

Defendants.

Case No. 3-02-CV-0334-D

COMPLAINT

Plaintiff, Great-West Life & Annuity Insurance Company, pleads as follows:

1. This action to enforce the terms of the Employee Welfare Benefit Plan for Employees and Dependents of Baron & Budd (the "Plan") and for equitable relief arises under the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 ("ERISA").

PARTIES

2. Plaintiff has been assigned all of the Plan's rights to enforce the Plan's Subrogation and Right of Recovery Provision, is a fiduciary of the Plan and, thus, is authorized to bring this action pursuant to 29 U.S.C. § 1132(a)(3).

3. Defendant, Donald Miller ("Miller"), is a citizen and resident of this District.

4. Upon information and belief, Defendant Hardin Ramey is a citizen and resident of Dallas, Texas.

5. Upon information and belief, Defendant Blakeley & Ramey is conducting business in Dallas, Texas.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because this action to enforce provisions of the Plan arises under ERISA.

7. Pursuant to 29 U.S.C. §1132(e)(2), venue is proper in this Court because Defendant resides in this District and because the breach of Plan provisions has occurred and is occurring in this District.

FACTUAL ALLEGATIONS

8. Miller is an employee of Baron & Budd. He elected to participate in the Plan for purposes of obtaining medical, surgical and hospital benefits.

9. On or about June 4, 2001, Miller was injured in a motor vehicle accident.

10. Miller retained Hardin Ramey to represent him in pursuing claims against the third parties responsible for his injuries.

11. In connection with the same injuries alleged in those claims, the Plan has paid medical benefits on behalf of Miller in the amount of \$30,748.53.

12. The Plan contains an express provision for subrogation and right of reimbursement, which provides for a first lien right of recovery, to the extent of benefits paid, when a covered person makes a recovery from another party responsible for the injuries.

13. Miller has settled his claims for a total amount of \$500,000.00. Plaintiff has requested that Miller honor the terms of the Plan, but he has refused to do so.

I. EQUITABLE RELIEF ENFORCING THE TERMS OF THE PLAN

14. Pursuant to 29 U.S.C. § 1132(a)(3), Plaintiff seeks equitable relief against Defendants to enforce ERISA and the terms of the Plan. By refusing to turn over the \$30,748.53

recovery to Plaintiff, Defendants have violated the terms of the Plan. Since these acts and/or practices violate the Plan's terms, this Court should enter an order declaring the Plaintiff's rights, and an order in constructive trust and equitable restitution enforcing the terms of the Plan by requiring Defendants to turn over \$30,748.53 out of the \$500,000.00 recovered on behalf of Miller.

II. PRAYER FOR RELIEF

15. Plaintiff requests that the Court enter an order granting it a constructive trust and equitable restitution against Defendants requiring them to turn over \$30,748.53 to the Plan, including appropriate pre-judgment interest and post-judgment interest at the rate of 1 ½ % pursuant to the terms of the Plan, and for any other relief to which it is entitled and that it be awarded its reasonable attorneys' fees and costs.

Dated this 13th day of February, 2002.

Respectfully submitted,

By: 

Thomas H. Lawrence
Attorney-in-Charge for Defendant
Federal I.D. No. 22802
State Bar of Texas No. 00787884
John M. Russell
TN Bar No. 17546

OF COUNSEL:

LAWRENCE & RUSSELL, LLP
5050 Poplar Avenue, Suite 1617
Memphis, Tennessee 38157
Telephone: (901) 844-4433
Facsimile: (901) 844-4435